

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>				1. Contract ID Code Firm-Fixed-Price		Page 1 Of 25	
2. Amendment/Modification No.  P00086		3. Effective Date  2004JAN28		4. Requisition/Purchase Req No.  SEE SCHEDULE		5. Project No. (If applicable)	
6. Issued By TACOM WARREN BLDG 231 AMSTA-AQ-ALEA KAREN ILER (586)574-7157 WARREN, MICHIGAN 48397-5000 HTTP://CONTRACTING.TACOM.ARMY.MIL EMAIL: ILERK@TACOM.ARMY.MIL		Code W56HZV		7. Administered By (If other than Item 6) DCMA CENTRAL PENNSYLVANIA- HERCULES AND BRADLEY TEAMS P.O. BOX 15512 YORK PA 17405-1512		Code S4201A	
				SCD B PAS NONE ADP PT HQ0337			
8. Name And Address Of Contractor (No., Street, City, County, State and Zip Code)  UNITED DEFENSE, L.P. GROUND SYSTEMS DIVISION 1100 BAIRS ROAD PO BOX 15512 YORK, PA. 17405-1512  TYPE BUSINESS: Large Business Performing in U.S.				<input type="checkbox"/>		9A. Amendment Of Solicitation No.	
						9B. Dated (See Item 11)	
				<input checked="" type="checkbox"/>		10A. Modification Of Contract/Order No. DAAE07-01-C-M016	
						10B. Dated (See Item 13) 2001MAY02	
Code 06085		Facility Code					
<b>11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS</b>							
<input type="checkbox"/> The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing items 8 and 15, and returning _____ copies of the amendments: (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. <b>FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER.</b> If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.							
12. Accounting And Appropriation Data (If required) NO CHANGE TO OBLIGATION DATA							
<b>13. THIS ITEM ONLY APPLIES TO MODIFICATIONS OF CONTRACTS/ORDERS</b>							
KIND MOD CODE: G It Modifies The Contract/Order No. As Described In Item 14.							
<input type="checkbox"/>		A. This Change Order is Issued Pursuant To: The Contract/Order No. In Item 10A. The Changes Set Forth In Item 14 Are Made In					
<input type="checkbox"/>		B. The Above Numbered Contract/Order Is Modified To Reflect The Administrative Changes (such as changes in paying office, appropriation data, etc.) Set Forth In Item 14, Pursuant To The Authority of FAR 43.103(b).					
<input checked="" type="checkbox"/>		C. This Supplemental Agreement Is Entered Into Pursuant To Authority Of: Mutual agreement of both parties					
<input type="checkbox"/>		D. Other (Specify type of modification and authority)					
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return _____ copies to the Issuing Office.							
14. Description Of Amendment/Modification (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)  SEE SECOND PAGE FOR DESCRIPTION							
Contract Expiration Date: 2007JAN31							
Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.							
15A. Name And Title Of Signer (Type or print)				16A. Name And Title Of Contracting Officer (Type or print) VITO ZUCCARO ZUCCAROV@TACOM.ARMY.MIL (586)574-7076			
15B. Contractor/Offeror  _____ (Signature of person authorized to sign)		15C. Date Signed		16B. United States Of America  By _____/SIGNED/ (Signature of Contracting Officer)		16C. Date Signed  2004JAN28	
NSN 7540-01-152-8070 PREVIOUS EDITIONS UNUSABLE				30-105-02		STANDARD FORM 30 (REV. 10-83) Prescribed by GSA FAR (48 CFR) 53.243	

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SECTION A - SUPPLEMENTAL INFORMATION

1. The purpose of this modification P00086 to Contract DAAE07-01-C-M016 is for the following:
- a. Change the expiration date of the contract from 31 January 2004 to 31 January 2007.
  - b. Change the first sentence in paragraph H.78.2.2 to read: "The Contractor shall submit a proposal for a downward adjustment of the aforementioned interim subcontract prices within 180 days after award of Modification P00073."
  - b. Change the date in paragraph H.78.3 from 31 January 2004 to 30 April 2004 to reach agreement on definitive subcontractor prices listed in paragraph H.78.2.
  - c. Incorporate the negotiated settlement of \$25,730 to repair Government-Furnished engines, and the negotiated settlement of \$12,640 for ISU Power Input Transient Testing as follows:
- |  |           |
|--|-----------|
| Available Credit to the Government (see Modification P00083):    | \$112,196 |
| Less Negotiated Settlement for Engine Failures:                  | 25,730    |
| Less Negotiated Settlement for ISU Power Input Transient Testing | 12,640    |
| Remaining credit to the government available for future offsets: | \$ 73,826 |

2. As a result of this modification, the total contract amount remains unchanged.

\*\*\* END OF NARRATIVE A 091 \*\*\*

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SECTION H - SPECIAL CONTRACT REQUIREMENTS

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H.24 to H.29    RESERVED

H.30 WARRANTY OF WEAPON SYSTEMS - MLRS CARRIERS ONLY

H.30.1 The following provision is applicable to the MLRS carriers under this contract.

H.30.2 Definitions:

H.30.2.1 Acceptance--is execution by an authorized Government representative of a DD form 250 and means the act by which the Government assumes for itself, or as an agent of another, ownership of the identified supplies or recognizes completion of partial or total performance specified in the Contract.

H.30.2.2 Supplies--are the end item vehicles and each component thereof furnished by the Contractor under this contract. The work does not include data or software.

H.30.2.3 Failure--is any condition or characteristics in any supplies furnished under the contract that is not in compliance with the requirements of the Contract to the extent that the supplies do not perform as prescribed in the appropriate -10, -20 and/or -34 technical manuals in effect on the date of this Contract and as may be amended by technical bulletins and flash bulletins.

H.30.2.4 Performance Requirements--is defined as operation of the vehicles warranted hereunder for the period of the warranty in accordance with the vehicle Performance Specification released for the production contract. No contract modification which changes the detail design and affects the performance requirements of the vehicles as reflected in the contract Performance Specification shall be put in place under the contract as a requirement until proven out with appropriate testing to assure that such change will not adversely impact vehicle performance requirements to levels demonstrated and accepted by the government during testing.

H.30.2.5 Design and Manufacturing Requirements--are defined as those structural and engineering plans and manufacturing particulars, including precise measurements, tolerance, materials and finished product test for the system being produced as applicable to vehicles deliverable under the contract.

H.30.2.6 Warranted Design Item--is defined as an item introduced into the baseline configuration by a change developed by the contractor to design and manufacturing requirements embodied in an executed change order(s) to the baseline configuration as set forth in C.60 of the contract.

H.30.2.7 Redesign--is defined as the remedy applicable to correct defective warranted design items when workmanship and material and design and manufacturing nonconformance have been eliminated as the cause of failure or defect.

H.30.2.8 System Defect--is a classification of failure of the same component which occur, or may occur, over the period of the warranty with a frequency, pattern, or sameness to indicate a logical regularity or occurrence which exceeds twice the expected rate of failure as set forth in the Vehicle Master Provisioning Record that requires multiple vehicle or fleet-wide corrective action.

H.30.3 Coverage:

H.30.3.1 Notwithstanding inspection and acceptance by the Government of supplies under this contract or any clause of this contract concerning the conclusiveness thereof, the contractor warrants for the periods set forth herein that all supplies provided under this contract:

- a) will be free from all defects in material and workmanship that would cause the warranted items to fail to meet the requirements of this contract; and
- b) will conform to the design and manufacturing requirements set forth in Section C of this contract; and
- c) will meet the performance requirements.
- d) The above warranties are applicable to supplies furnished hereunder.

H.30.4 Contractor Liability

H.30.4.1 The Contractor shall be liable for the costs of correction of all defects resulting from breach of any of the three

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warranties listed in paragraph H.30.3.1, above, up to and including vehicle handoff to the user. Such costs include vehicle disassembly and removal of defective components, replacement components, installation of replacement components and vehicle reassembly. Should the Government require the Contractor to correct or partially correct a defect, the Contractor shall correct the defect at either the Contractor's plant or at the location of the defective supplies. If defective supplies are returned to the Contractor's plant for correction, the Contractor shall bear the transportation costs to its plant and return to the Government. The Government shall provide reasonable evidence in support of each claim of defect including parts, where necessary to establish the nature of the defect at Government expense.

H.30.4.2 After vehicle handoff to the user, and in the event the Government determines that a systemic defect exists in the supplies delivered under this contract, and such defect is determined to be the result of a breach of any of the three warranties in paragraph H.30.3 above, then the Contractor shall be liable for the cost of correction of such systemic defect. Such costs include vehicle disassembly and removal of defective components, replacement components, installation of replacement components and vehicle reassembly. Should the Government require the Contractor to correct or partially correct a defect, the Contractor shall correct the defect at either the Contractor's plant or at the location of the defective supplies. If defective supplies are returned to the Contractor's plant for correction, the Contractor shall provide reasonable evidence in support of each claim of systemic defect including parts, where necessary to establish the nature of the defect, at Government expense.

H.30.4.3 In addition to the remedy set forth in paragraph H.30.3 above, if such a systemic defect(s) exists in a warranted design item and workmanship and material design and manufacturing nonconformance have been eliminated as the cause of such defect, the contractor shall be liable for redesign of such defective item, including any testing required to validate/qualify the proposed redesign, plus any other effort normally associated with an ECP, provide the redesigned item for vehicles delivered with the defective item, and incorporation of the redesign item into remaining vehicles to be manufactured under this contract, at no increase in cost to the Government.

#### H.30.5 Redesign and Testing

H.30.5.1 The Contractor's responsibility for warranted design items delivered under this contract shall continue for an eighteen (18) month period following delivery to first end item user.

H.30.5.2 To the extent correction will require redesign, the Contractor shall submit to the Contracting Officer a written redesign plan within 45 days, or such other period as may be mutually agreeable, after receipt of the contracting Officer's notice. The Contracting Officer shall within 30 days after receipt of the Contractor's redesign plan either accept or reject the plan. If the Government accepts the plan, the Contractor will proceed with the redesign effort at the Contractor's expense. If the Contractor's recommended redesign is determined to be inadequate, the Contractor shall be informed of the extent of the inadequacies and shall submit a revised recommendation within 30 days after receipt of such information.

H.30.5.3 If the contractor's initial and/or revised recommended redesign can be demonstrated to correct the systemic defect, but the Government directs an alternative redesign be implemented, the Contractor shall be entitled to an equitable adjustment for any increased cost to the Contractor caused by implementing the Government's redesign over the cost of implementing the Contractor's proposed redesign, and the Contractor shall have no warranty obligation with respect to the Government's directed redesign.

H.30.5.4 Where the tests for a warranted design item are not satisfactorily completed until after incorporation of the ECP into the contract, warranty coverage shall commence when such items are initially incorporated into the vehicles, except that when the item configuration (design) has been further changed as a result of test and evaluation findings, warranty coverage shall commence when the item conforming to the configuration that satisfactorily completed the tests is initially incorporated into the vehicles.

#### H.30.6 Notice

H.30.6.1 Within 60 days from the discovery of defective parts during the failure free period of the warranty, the Government shall provide written notice to the Contractor by means of a DA form 2407 or DA form 5504 of the failure of supplies to conform to the Contractor's warranties and the remedy elected. Such notice shall include a claim for reimbursement of labor calculated by utilizing the time estimates to repair found in the Maintenance Allocation Chart, times a Government labor rate and parts based on Government costs. However, Government failure to provide written notice within the 60 days period shall not form a basis for the Contractor to refuse to honor its warranty obligation.

H.30.6.2 Any claim for correction of a systemic defect including redesign shall be invoked by the Contracting Officer giving notice to the Contractor within 45 days after the conditions defining systemic defect as set forth above, have been adequately demonstrated to the Contracting Officer. Such claim shall be in writing and shall cite the basis for such determination and any required corrective action. The contractor shall have no liability under this warranty unless such notice is received within 45 days after completion of the applicable warranty period for systemic defects relating to workmanship and material, design and manufacturing requirements, performance requirements of the warranted design items.

#### H.30.7 Period

H.30.7.1 Except for the extended periods provided herein for warranted design items, the basic vehicle warranty shall extend from the

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date of acceptance of each vehicle to the end of the 15th month after the date of acceptance or 6 months after deprocessing of FMS customers, whichever is longer.

H.30.8 Field Maintenance Responsibility and Liability

H.30.8.1 Maintenance performed by US Government personnel in accordance with published maintenance procedures, shall not void any coverage under this warranty and shall be at US Government expense, including parts and labor.

H.30.8.2 Use by US Government of MIL-SPEC parts shall not void the warranty unless it can be determined that failure is caused thereby.

H.30.9 Rights and Equitable Adjustment

H.30.9.1 If upon determination of warranty claim the US Government elects to repair the warranted items at Government expense, or if the US Government elects not to require redesign, repair or replacement of defective or non-conforming warranted supplies to which it is otherwise entitled at contractor expense under this warranty, the US Government shall be entitled to an equitable adjustment. The amount of the equitable adjustment for repair/replacment of warranted supplies shall be the lower of the replacment cost or the agreed upon estimated repair cost to the Contractor. The replacement cost shall be the amount originally charged to the Government in the Contractor's bill of material for the defective supplies.

H.30.10 Exclusions

H.30.10.1 The provisions of this warranty will not apply to any warranted supplies if failure has been caused by:

- a) Improper installation or maintenance by US or FMS Government.
- b) Operation contrary to the Technical Manuals design operating parameter, or other written instructions provided to and approved by the Government in such a way to be a principal cause of the failure.
- c) Repair or alteration by the Government in such a way as to induce a failure.
- d) Misuse, neglect or accident on the part of the Government personnel.
- e) Combat damage.
- f) Foreign object damage.
- g) Failure caused by acts of God, subversion, riots, vandalism, or sabotage, or fire or explosion induced by or originating from sources external to the warranted items.
- h) Damage attributable to improper packaging, packing, crating, handling or storage by the US or FMS Governments or their agents to the extent of such damage.

H.30.11 Disclaimers and Limitations

H.30.11.1 Disputes arising under this Contract shall be resolved in accordance with the clause of this contract entitled "Disputes".

H.30.11.2 This warranty is the only warranty applicable to the MLRS carriers delivered hereunder and specifically excludes liability for loss, damage or injury to third parties, and any and all consequential damage. All implied warranties and warranties of fitness for particular purpose are excluded from any obligation under this contract.

H.30.11.3 With respect to Government furnished property, the Contractor's warranty including its warranty with respect to redesign shall extend only to proper installation so as not to degrade its performance and/or reliability, unless the Contractor is required to perform modification or authorized repair on such Government furnished property, in which case the Contractor's warranty shall extend to such modification or authorized repair.

H.30.11.4 This warranty in non-transferable to other DOD agencies and is to the benefit of US or FMS Governments and not to third parties.

H.30.11.5 The rights and remedies of the Government provided in this clause:

- a) shall not be affected in any way by any items and conditions of this Contract concerning the conclusiveness of inspection and acceptance.
- b) Are in addition to, and do not limit, any rights afforded the Government by any other clause of this contract, including, but not limited to, initial acceptance test criteria.

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c) The contractor shall not be liable for warranty claims if it is determined that the failed part(s) was/were provided by any source other than the Contractor.

d) The Contractor shall be entitled to an equitable adjustment in the contract price where no failure is determined to have occurred and the warranty claim was asserted without reasonable cause.

e) The provisions of this warranty do not apply to consumables, lubricants, or other items normally replaced as part of scheduled maintenance, tuneups, calibrations, or other adjustments, or normal wear and tear.

H.30.12 The Government reserves the right to delete this clause H.30 unilaterally prior to DD 250 sign-off. If the Government exercises this right, the per vehicle prices of MLRS carriers under CLINs 1021 and 1022 shall be reduced by \$5,500 per carrier.

H.31 LIMITATION OF PRICE AND CONTRACTOR OBLIGATION

H.31.1 Funds available for performance of the effort of this contract are the funds obligated in Section G of the contract. The funds are further described at Paragraph H.32 titled "Multiyear Contract Funding and Program Year Call Ups", below. The amount of funds available at award is not considered sufficient for the performance for any program year other than the First Program Year. When additional funds are available for the full requirements of the next succeeding Program Year, the Contracting Officer shall, not later than the date specified in Paragraph H.32 (unless a later date is agreed to), notify the Contractor in writing. The Contracting Officer shall also modify the amount of funds described in paragraph H.32 below, as available for contract performance. This procedure shall apply for each successive Program Year.

H.31.2 The Government is not obligated to United Defense for any amount over that described in the Schedule (see H.32) as available for contract performance.

H.31.3 The Contractor may incur labor, material, and other associated recurring costs to satisfy requirements of any program year under this contract, provided that the costs are:

- (1) reasonable, allocable, and allowable;
- (2) properly incurred under the contract; and
- (3) either fully funded or funded with advance procurement funds (EOQ funding) consistent with the special contract provisions entitled "Multiyear Contract Funding and Program Year Callups" and "Cancellation Under Multiyear Contracts".

H.31.4 If this contract is terminated under the "Termination for Convenience of the Government" clause, "total contract price" in that clause means the amount available for performance of this contract, as specified in Paragaraph H.31.1 above, plus the amount established as the cancellation ceiling. "Work under the contract" in that clause, means the work under program year requirements for which funds have been made available. If the contract is terminated for default, the Government's right under this contract shall apply to the entire multiyear requirements.

H.31.5 Notification to the Contractor of an increase or decrease in the funds available for performance of this contract under another clause (i.e., an "Option" or "Changes" clause) shall not constitute the notification contemplated by Paragraph H.31.1, above.

H.32 MULTIYEAR CONTRACT FUNDING AND PROGRAM YEAR CALL UPS

H.32.1 FUNDS: Funds available for performance of this contract are the funds obligated in Section G. Funds available for performance by program year are set forth below. Additionally, for the purpose of the special provision of this contract entitled "Limitation of Price and Contractor Obligations", the Contracting Officer shall notify the Contractor in writing (contract modification) of the availability of funds for the full requirements of succeeding program years:

	FUNDING
a) First Program Year:	\$258,580,711.76
b) Second Program Year:	\$274,420,261.00
c) Third Program Year:	\$209,121,190.00
d) Egypt MLRS	\$ 23,417,971.98
<b>TOTAL</b>	<b>\$765,540,134.74</b>

H.32.2 ECONOMIC ORDERING QUANTITY: The amount of funds which are set forth above at the time of award is not sufficient for

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performance of the Second or Third Program Year requirements. Funds are presently available as shown below for advance acquisition of material in Economic Order Quantities (EOQ).

H.32.2.1 Funding for advance acquisition of material in Economic Order Quantities (EOQ) for Program Year Two in the amount of \$5,656,000 is available and will be provided upon execution of this contract. The Contractor is authorized to initiate such advance acquisition of material in EOQs as authorized by this contract. This funding constitutes the Governemnt's termination liability until such time as the remainder of Program Year Two is either fully funded or cancelled.

H.32.2.2 Funding for advance acquisition of material in Economic Order Quantities (EOQ) for Program Year Three in the amount of \$8,228,653 is available and will be provided upon execution of this contract. The Contractor is authorized to initiate such advance acquisition of material in EOQs as authorized by this contract. This funding constitutes the Government's termination liability until such time as the remainder of Program Year Three is either fully funded or cancelled.

H.32.3 PROGRAM YEAR TWO CALLUP: If the Second Program Year is not cancelled, and unless a later period is agreed upon by the parties, the Contracting Officer shall notify the Contractor in writing of an increase in the amount set forth in Paragraph H.32.1 for performance of the requirements for the Second Program Year. The Government shall have the right to unilaterally call up the Second Program Year requirements. Program Year Two call up shall consist of one hundred forty-two (142) A3 configured vehicles (forty-four (44) M2A3s and ninety-eight (98) M3A3s) and the cost reimbursement CLIN for test vehicle refurbishment as identified by the below CLINS.

		FIXED PRICE REDETERMINABLE		
CLIN 2001	44 each M2A3	\$67,037,739.00		
CLIN 2005	98 each M3A3	\$146,111,455.00		
		COST PLUS FIXED FEE		
		<u>COST</u>	<u>FIXED FEE</u>	<u>COST PLUS FIXED FEE</u>
CLIN 2009	Test Refurbishment	\$419,651.00	\$35,669.00	\$455,320.00

H.32.4 Program Year Three Callup: If the Third Program Year is not cancelled, and unless a later period is agreed upon by the parties, the Contracting Officer shall notify the Contractor in writing of an increase in the amount set forth in Paragraph H.32.1 for performance of the requirements for the Third Program Year. The Government shall have the right to unilaterally call up the Third Program Year requirments. Program Year Three call up shall consist of one hundred thirty-eight (138) A3 configured vehicles (thirty-five (35) M2A3s and one hundred and three (103)M3A3s) and the cost reimbursement CLIN for test vehicle refurbishment as identified by the below CLINS.

		FIXED PRICE REDETERMINABLE		
CLIN 3001	35 each M2A3	\$ 53,517,685.00		
CLIN 3005	103 each M3A3	\$152,020,500.00		
		COST PLUS FIXED FEE		
		<u>COST</u>	<u>FIXED FEE</u>	<u>COST PLUS FIXED FEE</u>
CLIN 3009	Test Refurbishment	\$221,142.00	\$18,797.00	\$239,939.00

H.33 CANCELLATION UNDER MULTIYEAR CONTRACTS

H.33.1 "Cancellation," as used in this clause, means that the Government is cancelling requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule, unless a later date is agreed to, if the Contracting Officer--

- (1) Notifies the Contractor that funds are not available for contract performance for any subsequent program year; or
- (2) Fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

H.33.2 Except for cancellation under this clause or termination under the Default clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the termination for convenience of the Government clause.

H.33.3 If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Schedule as applicable at the time of cancellation.

H.33.4 The cancellation charge will cover only --

- (1) Costs--

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(i) Incurred by the Contractor and / or subcontractors;  
(ii) Reasonably necessary for performance of the contract; and  
(iii) That would have been equitably amortized over the entire multi-year contract period but, because of the cancellation, are not so amortized; and

(2) A reasonable profit or fee on the costs.

H.33.5 The cancellation charge shall be computed and the claim made for it as if the claim were being made under the Termination for Convenience of the Government clause of this contract. The Contractor shall submit the claim promptly but no later than one (1) year from the date--

(1) of notification of nonavailability of funds;

(2) Specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

H.33.6 The Contractor's claim may include--

(1) Reasonable nonrecurring costs (see FAR Subpart 17) which are applicable to and normally would have been amortized in all supplies or services which are multi-year requirements;

(2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;

(3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

(4) Costs not amortized solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

H.33.7 The claim shall not include--

(1) Labor, material, or other expenses incurred by the contractor or subcontractors for performance of the cancelled work;

(2) Any cost already paid to the Contractor; and

(3) Anticipated profit or unearned fee on the canceled work

H.33.8 This contract includes an Option(s) clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in option quantities any costs of a startup or nonrecurring nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those recurring costs and a reasonable profit or fee necessary to furnish the additional option quantities.

H.33.9 Quantities added to the original contract through the Option clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

H.34 M2A3/M3A3 CANCELLATION CEILINGS

H.34.1 Cancellation shall occur if the Contracting Officer fails to notify the Contractor by the respective dates below. Cancellation ceilings for program year 2 and program year 3 of the multi-year are provided below. Pursuant to FAR 52.217-2 the amounts represent the maximum amount the Government may be liable for under said clause in the event any program year(s) are cancelled. All option CLINs are excluded from the cancellation ceiling.

Cancellation ceiling for program year two through three is \$19,994,498	30 March 2002
Cancellation ceiling for program year three is \$18,954,529	31 March 2003



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H.35.1 Performance-Based Payments

(a) Amount of payments and limitations on payments. Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract's description of the basis for payment.

(b) Contractor request for performance-based payments. The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Contractor's request shall contain the information and certification detailed in paragraphs(1) and (m) of this clause.

(c) Approval and payment of requests.

(1) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contracting Officer shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contracting Officer may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract, and approved requests shall be paid in accordance with the prompt payment period and provisions specified for contract financing payments by that clause. However, if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquiries into the status of an event or performance criterion, or into any of the conditions listed in paragraph (e) of this clause, or into the Contractor certification, payment is not required, and the prompt payment period shall not begin until the Contracting Officer approves the request.

(3) The approval by the Contracting Officer of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

(d) Liquidation of performance-based payments.

(1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

(2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the Contractor shall repay to the Government the excess. Unless otherwise determined by the Contracting Officer, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

(e) Reduction or suspension of performance-based payments. The Contracting Officer may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract(which includes paragraphs (h) and (i) of this clause).

(2) Performance of this contract is endangered by the Contractor's(i)Failure to make progress; or (ii) unsatisfactory financial condition.

(3) The Contractor is delinquent in payment of any subcontractor or supplier under this contract in the ordinary course of business.

(f) Title.

(1) Title to the property described in this paragraph (f) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) Property. As used in this clause, includes all of the following described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices: (i) Parts, materials, inventories, and work in process; (ii)special tooling and special test equipment to which the

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Government is to acquire title under any other clause of this contract; (iii) nondurable (i.e., nonmarital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (f)(2)(ii) of this clause; and (iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract (e.g., the termination or special tooling clauses) shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract, without requesting the Contracting Officer's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Contracting Officer.

(5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all performance-based payments, title shall vest in the Contractor for all property (or the proceeds thereof) not (i) Delivered to, and accepted by, the Government under this contract; or (ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(g) Risk of loss. Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. If any property is damaged, lost, stolen, or destroyed, the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(h) Records and controls. The Contractor shall maintain records and controls adequate for administration of this clause. The Contractor shall have no entitlement to performance-based payments during any time the Contractor's records or controls are determined by the Contracting Officer to be inadequate for administration of this clause.

(i) Reports and Government access. The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Contractor shall give the Government reasonable opportunity to examine and verify the Contractors records and to examine and verify the Contractor's performance of this contract for administration of this clause.

(j) Special terms regarding default. If this contract is terminated under the Default clause:

(1) the Contractor shall, on demand, repay to the Government the amount of unliquidated performance-based payments, and

(2) title shall vest in the Contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.

(k) Reservation of rights.

(1) No payment or vesting of title under this clause shall (i)excuse the Contractor from performance of obligations under this contract; or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause (i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(1) Content of Contractor's request for performance-based payment. The Contractor's request for performance-based payment shall contain the following:

(1) The name and address of the Contractor;

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- (2) The date of the request for performance-based payment;
- (3) The contract number and/or other identifier of the contract or order under which the request is made;
- (4) Such information and documentation as is required by the contracts description of the basis for payment; and
- (5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (m) of this clause.

(m) Content of Contractors certification. As required in paragraph (1)(5) of this clause, the Contractor shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that-

- (1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract and the instructions of the Contracting Officer;
- (2) (Except as reported in writing on \_\_\_\_\_), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;
- (3) There are no encumbrances (except as reported in writing on \_\_\_\_\_) against the property acquired or produced for, and allocated or properly chargeable to, the contract which would affect or impair the Government's title;
- (4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated \_\_\_\_\_; and
- (5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

#### H.36 ESSENTIALITY/MATERIALITY OF DELIVERY SCHEDULE

H.36.1 For purposes of the Performance Based Payments clause (See provision H.35, above) it is agreed and understood that the vehicle fielding and data delivery schedules is a material requirement of this contract. The Government may reduce or suspend payments in the event the Contractor becomes delinquent in deliveries or where it is evident that delivery will not be timely because of the Contractors failure to make progress.

#### H.37 MATERIAL REQUIREMENTS

H.37.1 In accordance with FAR 52.211-5 of this contract entitled Material Requirement, the used, reconditioned or remanufactured materials listed in Attachment 10 to the contract entitled "Approved Used, Reconditioned or Remanufactured Material" have been approved for use under the contract.

#### H.38 DATA RESPONSIBILITY

H.38.1 Recognizing that a visual review, by the Government, of data delivered or released under this contract may be insufficient to prove out their adequacy for intended use, the Contractor shall certify prior to contract completion, that to the best of his knowledge and belief all such data are complete and conform to the data requirements of this contract. Failure of related data, made under the terms of this contract, to meet the requirements thereof shall be cause for rejection as unacceptable. Prior to final acceptance of the drawings and related data by the Government, the Contractor shall submit evidence that drawings and related data rejected as unacceptable have been corrected. Notwithstanding such final acceptance, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, data deficiencies (i) at any time during the performance of this contract, and (ii) for a period of three (3) years thereafter, in accordance with Special Provision H.17 of this contract entitled WARRANTY OF DATA.

#### H.39 SUPPLIES TO BE ACCORDED DUTY-FREE ENTRY (MAR 1998)

H.39.1 In accordance with paragraph (b) of the Duty-Free Entry clause of this contract, in addition to duty free entry for all qualifying country supplies (end products and components) all eligible end products subject to applicable trade agreements (if this contract contains the Buy American Act - Trade Agreements - Balance of Payments Program clause or the Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments clause), the following foreign end products that are neither qualifying

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country end products nor eligible end products under a trade agreement, and the following foreign nonqualifying country components, are accorded duty-free entry:

Part Number	Description	Vendor
01) 12369774-F	Turrent Ring Forging	Canadian Forgings Inc.
02) 12369775-F	Turrent Ring Forging	Canadian Forgings Inc.
03) 12369776-F	Turrent Ring Forging	Canadian Forgings Inc.
04) 12369777-F	Turrent Ring Forging	Canadian Forgings Inc.
05) 12369778-F	Intake Grill Forging	Canadian Forgings Inc.
06) 12334321-F	Shield Field Forging	Canadian Forgings Inc.
07) 12295295-F	Bracket Forging	Canadian Forgings Inc.
08) 12369308	Shock Absorber	General Kinetics Engineering Corp.
09) 12359649	Plain Bearing	General Kinetics Engineering Corp.
10) M5506622	Steel Armor Plate	Stelco
11) M5323572	Steel Armor Plate	Stelco
12) M5504740	Steel Armor Plate	Stelco
13) 12367362-S	Mount Hinge Support	Vestshell Inc.
14) 13385234-3S1	Hinge Support	Vestshell Inc.
15) 12385234-4S1	Hinge Support	Vestshell Inc.
16) 9380346-14C	Lug Sight Arm Inv	Vestshell Inc.
17) 12307272-C	Hinge Com Casting	Vestshell Inc.
18) 12359272-C	Control Rod Plate	Vestshell Inc.
19) 254772-1	Bracket	Vestshell Inc.
20) 12307410-C	Bracket Casting	Vestshell Inc.
21) 12359290-C	Bracket Casting	Cabiran C/O Mistral
22) 12297231-C	Bracket Casting	Cabiran C/O Mistral
23) 12359291-C	Eye Bracket Casting	Cabiran C/O Mistral
24) 12294495-C	Casting Support	Cabiran C/O Mistral
25) 12298207-2	Retainer Tie Down	Cabiran C/O Mistral
26) 12294396-C	Casting Coupling	Cabiran C/O Mistral
27) 12294397-C	Output Casting Coupling	Cabiran C/O Mistral
28) 12466033-1	Color Flat Panel Display	Computing Devices of Canada (CDC)
29) 3227398-0001	BIOC Display Kit	Raythen Electronic Systems (Supplier Brimar Ltd, U.K.)
30) 12350934-F	Forging, Cover	Canada Forgings Inc.
31) 264X13031X5000	Bearing, Roller	SKF USA
32) 12297950	Bearing, Pair	SKF USA
33) 12308476	Journal Assembly	Dana Corporation
34) 05-2-3443	Spider and Bearing	Dana Corporation

H.39.2 For MLRS vehicles acquired under the contract, these additional items shall apply:

Part Number	Description	Vendor
01) 1229577	S Sprocket	Canadian Forgings Inc.
02) 12300346	Heater	Espar Products

#### H.40 GOVERNMENT RIGHT TO FURNISH PROPERTY, MATERIAL, AND/OR EQUIPMENT and SHIPMENT

H.40.1 The Government shall furnish in a timely manner the items listed in Attachment 1 of this contract to support build of vehicles. The Government reserves the right to bulk deliver the items to the Contractor. Bulk delivery must occur more than 120 days in advance of the vehicle build schedule. The Contractor is responsible for notifying the Government of any changes in build schedules.

H.40.2 In addition to the Government furnished property, material and/or equipment described in Attachment 1 of this contract, the Government reserves the right to furnish to the Contractor other items of Government property, material and/or equipment or to increase the quantities specified in Attachment 1.

H.40.3 The contractor shall promptly take such action as the Contracting Officer may direct with respect to such additional property, material and/or equipment. In the event the Government exercises its right under this paragraph, the parties will agree to equitably adjust the contract price and/or delivery schedule or performance dates in accordance with the procedures provided for in the "Changes" clause of this contract. The contractor shall submit either a proposal for equitable adjustment or rationale for no equitable adjustment within thirty-(30) days following the Contracting Officer's notice of change. Failure to agree to an equitable adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause.

H.40.4 All property furnished pursuant to this paragraph shall be subject to the provisions of the "Government Property" clause of this

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contract.

H.41 USE OF GOVERNMENT PROPERTY AND FACILITIES

H.41.1 The Contractor based this contract price on rent-free use of property and facilities that were initially made available under other contracts (see below). The Government property and facilities are in the possession of the Contractor and subcontractors accountable under the below listed Government contracts. Rent-free, non-interference use of Government property accountable under those contracts is approved.

CONTRACT	CONTRACTOR	PROGRAM
a) DAAE07-95-C-X030	United Defense	System Technical Support
b) DAAE07-96-C-X036	United Defense	BFV Remanufacture
c) DAAE07-96-C-X069	United Defense	MLRS manufacture
d) DAAE07-00-C-M002	United Defense	BFV Remanufacture
e) DAAE07-01-C-M011	United Defense	BFV Remanufacture

H.42 SECURITY REQUIREMENTS

H.42.1 Contract Security Classification Specification DD Form 254, Attachment 11, is applicable to performance under this contract.

H.43 DEPARTMENT OF DEFENSE ACTIVITY ADDRESS CODE

H.43.1 The Department of Defense Activity Address Code (DODAAC) for use under this contract is CKOP12.

H.44 CONTRACT ADJUSTMENT CLAUSES

H.44.1 The price for this contract was negotiated with the understanding that the total quantities of vehicles and kits specified in H.44.4 would be placed on contract in the manner specified elsewhere in this contract (at basic award, through callups, or through options). As a result, the unit prices established for these vehicles and kits include such things as the impacts of learning based on the specified quantities, the amortization of non-recurring costs over the specified quantities, and the bundling of like material/LRUs with single supplier(s) and/or the combined vehicle/kit material/LRUs within a given program year and between program years. It is further understood that the contract price was negotiated with the understanding that the Contractor has agreed upon long term contracts that exceed the base quantity requirements of this contract, which are included in the bundled material/LRUs. Attachment 12 to the contract contains a listing of the material/LRUs that were bundled for determination of the contract price. The following paragraphs H.45 and H.46 contain provisions for the potential re-pricing of the contract should the Government not act upon the requirements specified in the individual clauses.

H.44.2 Should the Government fail to call up Program Year Two or Program Year Three Bradley A3 vehicles, the provisions at H.33 and H.34 shall apply for the Bradley A3 vehicle impact.

H.44.3 Should the Government partially terminate for convenience a portion of the contract, the provisions of the contract's Termination for Convenience of the Government (Fixed Price) clause (FAR 52.249-2) shall apply. Contract equitable adjustment as a result of such a reduction or termination shall include the impact of the reduction/termination on each of the vehicles/kits and is not limited to the specific vehicle/kit actually reduced/terminated. For the purposes of this clause, the provisions of FAR 52.249-2, subparagraphs (f) and (l) are assumed to include all vehicles/kits under the contract including vehicles and kits not specifically subject to reduction/termination.

H.44.4 For purposes of the adjustment clauses the bundling is based on the following minimum quantity of vehicle systems and kits being acquired:

	Program Year One	Program Year Two	Program Year Three	Total
Bradley A3	109	142	138	389
Bradley A2 ODS	13	0	0	13
Kit - 57K1587	0	9	0	9
Kit - 57K1588	0	36	0	36
Kit - 57K1589	121	0	128	249
Kit - SK57K1593	0	44	28	72
Kit - SK57K1594	58	58	64	180
MLRS Carriers	29	0	0	29

H.44.5 An equitable adjustment to the contract may be initiated if, after considering the callup and option dates during this contract, the total procurement commitment for any vehicle/kit falls below the minimum quantities identified in H.44.4.

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H.44.6 The rights and remedies of the Contractor provided in H.44 through H.47 are in addition to, and do not limit, any rights afforded the Contractor by any other clause of this contract including, but not limited to, "Cancellation Under Multiyear Contracts and Termination for Convenience of the Government (Fixed Price)".

**H.45 CONTRACT ADJUSTMENT - DUE TO MATERIAL/LABOR ADJUSTMENTS**

H.45.1 The parties recognize that the per unit prices for Vehicles and Applique Kits under this Contract were negotiated with the understanding that the total quantity of each vehicle and kit specified in H.44.4 would be acquired under this Contract. Therefore, the Contract may require an equitable adjustment(s) to the kit unit prices, to include any impact to the Bradley A2 ODS, A3 vehicle prices, and MLRS Vehicles, if the Government fails to exercise any one of the following actions:

- (a) Exercise Program Year Two kit options in their entirety by 30 March 2002, or
- (b) Exercise Program Year Three kit options in their entirety by 31 March 2003, or
- (c) Exercise Callup for Program Year Two A3 Vehicle requirements by 30 March 2002, or
- (d) Exercise Callup for Year Three A3 Vehicle requirements by 31 March 2003
- (e) Exercise MLRS A0 or A1 Unique Material options in their entirety by 30 November 2001

H.45.2 Should the Government fail to exercise and/or call up any of the above actions, then the Contractor may request an equitable adjustment(s) to this contract. If the Contractor makes such a request, it shall be in the form of a proposal(s) for equitable adjustment. The request(s) must be made not later than three (3) months from the date specified above for events (a) through (e). Following negotiations, the contract shall be adjusted as stated in either H.45.2.1 or H.45.2.2 below, or a combination of the two. The determination of the method of adjustment shall be solely at the option of the Government.

H.45.2.1 An equitable adjustment to the total contract amount shall be made to compensate the Contractor and the Contractor's suppliers, subcontractors or vendors. The amount shall not exceed the following:

- (a) \$2,221,220.00, if the Program Year Two kit options are not exercised options in their entirety.
- (b) \$2,310,660.00, if the Program Year Three kit options are not exercised options in their entirety.
- (c) \$1,236,985.00, if the call up of Program Year Two vehicle requirements does not occur.
- (d) \$ 649,555.00, if the call up of Program Year Three vehicle requirements does not occur.
- (e) \$ 591,115.00, if the MLRS A0 or A1 unique Material Options are not exercised in their entirety.

H.45.2.2 A reduction in the quantity of kits delivered, with no reduction in contract amount. The reduction in the number of kits shall be no more than:

- (a) 26 each (57K1589) kits, if the Program Year Two kit options are not exercised in their entirety.
- (b) 45 each (SK57K1594) kits, if the Program Year Three kit options are not exercised in their entirety.
- (c) 15 each (57K1589) kits, if the call up of Program Year Two Vehicle requirements does not occur.
- (d) 13 each (SK57K1594) kits, if the call up if Program Year Three Vehicle requirements does not occur.

H.45.2.3 These amounts are stand-alone values. Therefore, as an example, if program year two vehicles are called up and program year two kits are optioned, but program year three vehicles are not called up and program year three kit options are not exercised, the total amount subject to adjustment would be (b+d). In this instance the adjustment would not exceed:

- (b) \$2,310,660 or 45 Kits
- (d) \$ 649,555 or 13 Kits  
\$3,060,215 or 58 Kits

**H.46 CONTRACT ADJUSTMENT - M2A3/M3A3 VEHICLES - DUE TO CIV ADJUSTMENTS - FOLLOW ON CONTRACT**

H.46.1 The parties to this contract recognize that unit prices for the 389 A3 vehicles are based on the bundling of material/LRU procurements with a planned follow-on multi-year contract, with the understanding that the follow on vehicle production/spares award(s) will occur not later than March 31, 2004. The Contractor's bundling agreements are based on utilizing the minimum quantities listed below for the follow on award. The parties agree that the quantities listed below can be acquired in a single contract or over multiple contracts (i.e. spares acquisitions), provided that the dates and types of contracts set forth below are met.

Subcontractor      Minimum Quantity for follow on multiyear contract(s)

		<u>FY04</u>	<u>FY05</u>	<u>FY06</u>	<u>FY07</u>	<u>TOTAL</u>	
a) Raytheon	CIV	111	122	100	100	482	*

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\* The parties agree that the total minimum quantity required over the four year period (Fiscal Year 2004 to 2007) is 482 each. The individual yearly quantities represent the minimum quantity that must be procured in a given year.

H.46.2 For purposes of determining whether minimum quantities have been achieved, a "spare" shall be assigned a "quantity" value that is equivalent to the proportion that the price of the spare represents of the production (LRU/subsystem) that it is an element of.

H.46.3 Should the Government fail to award a follow on multiyear contract (CIV) by 31 March 2004 that meets the above quantity limits, then the Contractor may be entitled to an equitable adjustment under this contract against the Program Year Three A3 vehicles, but the adjustment can arise against any/all program years. If the contractor makes such a request, it shall be in the form of a proposal(s) for equitable adjustment. The request(s) must be made not later than three (3) months from 31 March 2004. Following negotiations, the contract shall be adjusted as stated in either (a) or (b), or a combination of the two. The determination of the method of adjustment shall be solely at the option of the Government. In the event the contract form or minimum quantities for the CIV set forth above are not achieved, the associated contract adjustment shall be based on the terms of UDLF/Raytheon subcontract (increase of \$5,475 per unit at Raytheon price to UDLF for each CIV subsystem delivered under this contract).

(a) An equitable adjustment to the total contract amount to compensate the Contractor and the Contractor's suppliers, subcontractors or vendors. The amount (based on 389 units) shall not exceed \$2,600,465.

(b) A reduction in the quantity of A3 vehicles delivered, with no reduction in contract amount. The reduction in the number of vehicles shall be no greater than 2 vehicles.

H.47 Reserved

H.48 Reserved

H.49 MAKE-OR-BUY PROGRAMS IN ACCORDANCE WITH SUBPART 15.4 OF THE FAR

H.49.1 The Contractor operates in accordance with a make or buy procedure ("United Defense Production Documentation Department Operating Procedure-PD-20, Revision B") that determines which items are to be purchased from outside suppliers for use in a product. The procedure is applicable to all Government production programs/contracts, including this contract. As such, no specific make-or-buy plan will be submitted for this contract. The contractor shall perform to its established procedure, hereafter referred to as the "program". The program (procedure) has been reviewed by the Government. It is considered an acceptable process for determining make or buy items.

H.49.2 If the Contractor desires to change its make or buy program or items under the contract, it shall review the requirements of FAR 52.215-9 of this contract entitled, "Changes or Additions to Make or Buy Program" to determine if notification to the Government and/or contract adjustment is required.

H.49.3 The contractor shall submit and negotiate changes from BUY to MAKE for those items over \$500,000 in each program year. For MAKE items the Contractor shall submit and negotiate changes only if the change would result in a subcontract over \$500,000.00 in any program year. Any short-term or temporary changes to alleviate manufacturing problems and/or delivery problems or changes specifically authorized by the Government will not be submitted or negotiated as changes to the Make or Buy Program.

H.50 PRIORITY RATING

H.50.1 A priority rating of D0-A4 is assigned to this contract and it is certified for National Defense use under DMS Regulation 1. The contractor shall take all necessary actions to extend this rating to its suppliers or subcontractors where required.

H.51 NOTIFICATION OF INCONSISTENCIES

H.51.1 Should the contractor discover or suspect any inconsistencies among contract provisions, requirements, specifications, and/or documents, he shall immediately notify the Procuring Contracting Officer in writing.

H.52 SMALL AND SMALL DISADVANTAGE BUSINESS SUBCONTRACTING PLAN

H.52.1 Attachment 13 to the contract lists the small and small disadvantaged business subcontracting plan(s) that are applicable to this contract. The plan(s) are incorporated by reference. The contractor shall retain copies of their vendors and subcontractors small and small disadvantage business subcontracting plan(s). These copies of the plans, along with the contractor's plan(s), shall be made available for review by appropriate government officials.

H.53 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFEROR

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H.53.1 The Representations, Certifications and Other Statements of Offeror (Section K), submitted in response to solicitation DAAE07-01-R-M009, in the possession of both parties, is incorporated into the contract by reference.

H.54 ALTERATIONS IN CONTRACT PROVISIONS

H.54.1 Contract Section I, General Provision I.65, FAR 52.243-1, "Changes-Fixed Price (August 1987)",paragraph c, is revised by replacing "30 days" with "90 days".

H.54.2 Contract Section I, General Provision I.67, FAR 52.243-7, "Notification of Changes (April 1984)", the fill-in portion of paragraph b is 90 days and the fill in portion of paragraph d is 30 days.

H.55 TITLE TO SPECIAL TOOLING -- DEVIATION

H.55.1 In accordance with the September 16, 1999 Class Deviation -- Special Tooling, DAR tracking number 99-00012 issued by the Director, Defense Procurement, the portion of the Government Property clause for fixed price contracts FAR 52.245-2 that states that special tooling is subject to title provisions in the special tooling clause is waived. The waiver is necessary because the 1984 edition of the Special Tooling clause (see Paragraph H.58), as contained in this contract, does not contain title provisions.

H.56 FAR PART 45 -- DEVIATION

H.56.1 In accordance with the July 13, 1999 Class Deviation from Federal Acquisition Regulation Part 45, DAR tracking number 99-00008, issued by the Director, Defense Procurement, the property record keeping and periodic physical inventory requirements for low-value property (special tooling, special test equipment, and plant equipment with an acquisition value of less than \$5,000 or less)is reduced per the deviation. Further in accordance with the deviation the contractor may defer reporting the loss, damage or destruction of low-value property until contract termination or completion.

H.57 LIMITED RIGHTS OF SUB-CONTRACTORS

H.57.1 The following A3 items are provided with limited rights.

PART NUMBER	DESCRIPTION	CONTRACTOR
3227307-2	Slip Rings	Raytheon
3225889-1	Twist Caps	Raytheon
3225887-1	Elevation Motor	Raytheon
3225899-1	Azimuth Motor	Raytheon
1797511-1	FOV Motor	Raytheon

H.58 SPECIAL TOOLING - FAR 52.245-17 -- (APRIL 1984) -- DEVIATION

a) Definition: "Special tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, that are of such specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items. Special tooling, for the purpose of this clause, does not include any item acquired by the Contractor before the effective date of this contract, or replacement of such items, whether or not altered or adapted for use in performing this contract, or items specifically excluded by the Schedule of this contract.

b) Use of special tooling: The contractor agrees to use the special tooling only in performing this contract or as otherwise approved by the Contracting Officer.

c) Initial list of special tooling: If the Contracting Officer so requests, the contractor shall furnish the Government an initial list of all special tooling acquired or manufactured by the Contractor for performing this contract (but see paragraph (d) for tooling that has become obsolete). The list shall specify the nomenclature, tool number, related product part number (or service performed), and unit or group cost of the special tooling. The list shall be furnished within 60 days after delivery of the first production end item under this contract unless a later date is prescribed.

d) Changes in design: Changes in the design or specifications of the end items being produced under this contract may affect the interchangeability of end item parts. To such an event, unless otherwise agreed to by the Contracting Officer, the contractor shall notify the Contracting Officer of any part not interchangeable with a new or superseding part. Pending disposition instructions, such usable tooling shall be retained and maintained by the contractor.



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e) Contractor's offer to retain special tooling: The Contractor may indicate a desire to retain certain items of special tooling at the time it furnishes a list or notification pursuant to paragraph (c), (d), or (h) of this clause. The contractor shall furnish a written offer designating those items that it wishes to retain by specifically listing the items or by listing the particular products, parts, or services for which the times were used or designed. Their offer shall be made on one of the following bases:

1) An amount shall be offered for retention of the items free of any Government interest. This amount shall ordinarily not be less than the current fair value of the items, considering among other things, the value of the items to the contractor for use in future work.

2) Retention may be requested for a limited period of time and under terms as may be agreed to by the Government and the contractor. This temporary retention is subject to final disposition pursuant to paragraph (i) of this clause.

f) Property control records: The contractor shall maintain adequate property control records of all special tooling in accordance with its normal industrial practice. The records shall be made available for Government inspection at all reasonable times. To the extent practicable, the contractor shall identify all special tooling subject to this clause with an appropriate stamp, tag, or other mark.

g) Maintenance: The contractor shall take all reasonable steps necessary to maintain the identity and existing condition of usable items of special tooling from the date such items are no longer needed by the contractor until final disposition under paragraph (i) of this clause. These maintenance requirements do not apply to those items designated by the Contracting Officer for disposal as scrap or identified as of no further interest to the Government under paragraph (i)(4) of this clause. The contractor is not required to keep unneeded items of special tooling in place.

h) Final list of special tooling: When all or a substantial part of the work under this contract is completed or terminated, the contractor shall furnish the Contracting Officer a final list of special tooling with the same information as required for the initial list under paragraph (c) of this clause. The final list shall include all items not previously reported under paragraph (c). The contracting officer may provide a written waiver of this requirement or grant an extension. The requirement may be extended until the completion of this contract authorizing the use of the special tooling under paragraph (b) of this clause. Special tooling that has become obsolete as a result of changes in design or specification need not be reported except as provided for in paragraph (d).

i) Disposition instructions: The contracting officer shall provide the contractor with disposition instructions for special tooling identified in a list or notice submitted under paragraphs (c), (d), or (h) of this clause. The instructions shall be provided within 90 days of receipt of the list or notice, unless the period is extended by mutual agreement. The contracting officer may direct disposition by any of the methods listed in subparagraph (1) through (4) of this paragraph, or a combination of such methods. Any failure of the Contracting Officer to provide specific instruction within the 90 day period shall be construed as direction under subparagraph (i)(3).

1) The Contracting Officer shall give the contractor a list specifying the products, parts, or services for which the Government may require special tooling and request the contractor to transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Government all usable items of special tooling that were designed for or used in the production or performance of such products, parts or services and that were on hand when such production or performance ceased.

2) The Contracting Officer may accept or reject any offer made by the Contractor under paragraph (e) of this clause to retain items of special tooling or may request further negotiation of the offer. The contractor agrees to enter into negotiations in good faith. The net proceeds from the contracting officer's acceptance of the contractor's retention offer shall either be deducted from amounts due the contractor under this contract or shall be otherwise paid to the government as directed by the contracting officer.

3) The contracting officer may direct the contractor to sell, or dispose of as scrap, for the account of the Government, any special tooling reported by the contractor under this clause. The net proceeds of all sales shall either be deducted from amounts due the contractor under this contract or shall be paid to the Government as directed by the Contracting Officer. To the extent that the Contractor incurs any costs occasioned by compliance with such directions, for which it is not otherwise compensated, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract.

4) The Contracting Officer may furnish the contractor with a statement disclaiming further Government interest or rights in any of the special tooling listed.

j) Storage or shipment: The contractor shall promptly transfer to the Government title to the special tooling specified by the Contracting Officer and arrange for either the shipment or the storage of such tooling in accordance with the final disposition instruction in subparagraph (i) (1) of this clause. Tooling to be shipped shall be properly packaged, packed, and marked in accordance with the directions of the Contracting Officer. Tooling to be stored shall be stored pursuant to a storage agreement between the Government and the Contractor, and as direct by the Contracting Officer. Tooling shipped or stored shall be accompanied by operation sheets or other appropriate documentation necessary to show the manufacturing operations or processes for which the items were used or designed. To the extent that the contractor incurs costs for authorized storage or shipment under this paragraph and not otherwise compensated for, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract.

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k) Subcontract provisions: In order to perform this contract, the contractor may place subcontracts (including purchase orders) involving the use of special tooling. If the full cost of tooling is charged to those subcontracts, the contractor agrees to include in the subcontracts appropriate provisions to obtain Government rights comparable to the rights of the Government under this clause (unless the contractor and the Contracting Officer agree that such rights are not of substantial interest to the Government). The contractor agrees to exercise such rights for the benefit of the Government as directed by the Contracting Officer.

H.59 RANGE PRICING FOR DELAYED OR ACCELERATED FIELDING

H.59.1 The Government shall have the unilateral right to either accelerate or delay individual vehicle fielding schedules as set forth below. If the Government exercises the options below, they are subject to the following conditions:

- a) MLRS carriers are not subject to changes in fielding schedule.
- b) Kits are not subject to changes in fielding schedule.
- c) No Program Year one Vehicles may be accelerated.
- d) Program Year two acceleration is limited to no more than 50 percent of Program Year two vehicles.
- e) Program Year three acceleration is limited to no more than 50 percent of Program Year three vehicles.
- f) BFV vehicles acquired by option are subject to the adjustment.
- g) BFV vehicles acquired as new requirements are subject to the adjustment.

H.59.2 DELAYED FIELDING - ONE MONTH - NO COST. The Government reserves the unilateral right to delay individual vehicle fielding schedules by one (1) month. However, the Government may not change the schedule fielding quantities or vehicle configurations. If the Government desires to exercise this option, the Government will provide written notice (a contract modification) to the Contractor within one (1) month of schedules fielding. Further, if the Government exercises this right, it shall be at no additional cost to the Government. This adjustment can be applied only once per vehicle.

H.59.3 DELAYED FIELDING - TWO to SIX MONTHS -COST. The Government reserves the unilateral right to delay individual vehicle fielding schedules by two to six monthes. However, the Government may not change the schedule fielding quantities or vehicle configurations. If the Government desires to exercise this option, the Government will provide written notice (a contract modification) to the Contractor within one (1) month of scheduled fielding. If the Government exercises this right, it shall be at the fixed per vehicle - per month price (\$1,000) set forth in Section B of this Contract. Further, the Contractor shall receive payment at time of originally scheduled fielding of the per unit price of the vehicles set forth in Section B less (insert an estimated deprocessing cost). This adjustment can be applied only once per vehicle.

H.59.4 ACCELERATED FIELDING - ONE MONTH - NO COST. The Government reserves the unilateral right to accelerate individual vehicle fielding schedules by one (1) month. The Government has the right to change the configuration mix, however there shall be no change in scheduled fielding quantities. If the Government desires to exercise this option, the Government will provide written notice (a contract modification) to the Contractor within fourteen (14) months of scheduled fielding. Further, if the Government exercises this right, it shall be at no additional cost to the Government. This adjustment can be applied only once per vehicle.

H.59.5 ACCELERATED FIELDING -ONE MONTH - NO COST. The Government shall have the unilateral right to accelerate the fielding schedule by one (1) month, providing the Government gives written notification to the contractor within 10 months of the scheduled fielding. The Government shall not change the configuration mix, nor change the scheduled fielding quantities. If the Government exercises this right, it shall be at no additional cost to the Government.

H.59.6 ACCELERATED FIELDING - TWO to THREE MONTHS - COST. The Government reserves the unilateral right to accelerate individual vehicle fielding schedules by up to two (2), but no more than three (3) months. The Government has the right to change the configuration mix; however, there shall be no change in scheduled fielding quantities. If the Government desires to exercise this option, the Government will provide written notification (a contract modification) within the time frames below. This adjustment may be applied only once per vehicle.

Notification Period Leadtime	Price (same for 2 to 3 months)
12 Months	\$171,000.00
13 Months	\$142,500.00
14 Months	\$114,000.00
15 Months	\$ 85,500.00
16 Months	\$ 47,500.00
17 Months	\$ 23,750.00
18 Months	\$ 14,250.00
19 Months or more months	\$ 0.00

H.59.7 As stated in H.59.1 above, there is no acceleration of program year one vehicles. Program year two and program year three vehicle acceleration is limited to no more than 50% of each program year. The quantities and vehicles accelerated to date are as

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follows:

Program Year Two Quantity Subject to Acceleration:	71	Accelerated to Date:	0
Program Year Three Quantity Subject to Acceleration:	69	Accelerated to Date:	0

H.60 OPTION - VEHICLE PAINT COLOR

H.60.1 The Government shall have the unilateral right to alter the vehicle paint color from tan to 383 Green in the case of Bradley vehicles, provided the Government gives written notification at the time of vehicle call up/option. If the option is exercised, it shall be at the price set forth in Section B, (B.9.3.2).

H.60.2 The Government shall have the unilateral right to alter the vehicle paint color from tan to Woodland Camouflage, PN 12367430, for the Bradley vehicles (ODS vehicles only), provided the Government gives written notification at the time of vehicle call up/option. If the option is exercised, it shall be at the price set forth in Section B, (B.9.3.2).

H.61 OPTION - APPLIQUE KITS

H.61.1 The Government reserves the unilateral right to increase the quantities of Applique kits delivered under this contract by up to an additional 147 each. The Government may exercise all 147 kits, or any portion of this option at the per unit price set forth in Section B (B.9.2) by giving written notice to the Contractor. The Governments unilateral right to exercise this option shall expire April 1, 2002. This option shall be considered the Program Year two kit options for purposes of any adjustment in accordance with Paragraph H.45 of the contract, entitled "Contract Adjustment - Applique Kits - Due to Material/Labor Adjustments" or Paragraph H.71 of the Contract, entitled "Contract Adjustment/Option - Multiyear Contract". The quantities for the option are:

44 - M7 Kit	PN SK57K1593
58 - ODS-E Kit	PN SK57K1594
36 - Linebacker Kit	PN 57K1588
9 - MUA Kit	PN 57K1587
total 147	

H.61.2 The Government reserves the unilateral right to increase the quantities of Applique kits delivered under this contract by up to an additional 220 each. The Government may exercise all 220 kits, or any portion of this option at the per unit price set forth in Section B (B.9.2) by giving written notice to the Contractor. The Government's unilateral right to exercise this option shall expire April 1, 2003. This option shall be considered the Program Year three kit options for purposes of any adjustment in accordance with Paragraph H.45 of the Contract, entitled "Contract Adjustment - Applique Kits - Due to Material/Labor Adjustments" or Paragraph H.71 of the Contract, entitled "Contract Adjustment/Option - Multiyear Contract". The quantities for the options are:

128 - M2 ODS Kit	PN 57K1589
28 - M7 Kit	PN SK57K1593
64 - ODS-E Kit	PN SK57K1594
total 220	

H.62 OPTION - M2A2 ODS VEHICLES

H.62.1 The Government reserves the unilateral right to increase the quantities of M2A2 ODS vehicles delivered under this contract by up to an additional thirty-five (35) vehicles. If the Government determines it desires to exercise this option, the Government will provide written notification (a contract modification) to the Contractor. The Government must exercise all thirty-five vehicles in one action, at the per unit price and test refurbishment costs set forth in Section B (B.9.4) by giving written notice to the Contractor. The Government's unilateral right to exercise this option shall expire 90 days after basic contract award. If this option is exercised the parties acknowledge that it includes costs for an ODS Follow-on Production Test, CLIN 1019, as follows:

COST:	\$69,216.00
FIXED FEE:	5,884.00
COST PLUS FIXED FEE:	75,100.00

H.63 OPTION - UNIQUE MLRS A0 CARRIER MATERIAL

H.63.1 The Government under CLIN 1022 is acquiring ten (10) each MLRS carriers. At the time of contract award a determination had not yet been made if the carriers should be configured as A0 carriers or A1 carriers. Therefore, the parties to the contract agreed that the CLIN 1022 vehicles include all costs for the build of either an MLRS A0 carrier or an MLRS A1 carrier less unique material. The Government reserves the unilateral right to require the Contractor to acquire up to ten (10) additional sets of MLRS A0 unique material. The Government may exercise its right for all ten (10) unique A0 material requirements at the per unit price set forth in Section B, (B.9.4). If the Government exercises its right, the Contractor shall use the material to completely build out carriers under CLIN 1022

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and the delivery schedule shall remain as stated in Section F of the Contract. The Government shall notify the Contractor that it is exercising its right to acquire additional material by giving written notification (a contract modification) to the Contractor. The Governments right to exercise this option shall commence as of date of contract award. The right shall expire 30 November 2001.

#### H.64 OPTION - UNIQUE MLRS A1 CARRIER MATERIAL/ESIP

H.64.1 The Government under CLIN 1022 is acquiring ten (10) each MLRS carriers. At the time of contract award a determination had not yet been made if the carriers should be configured as A0 carriers or A1 carriers. Therefore, the parties to the contract agreed that the CLIN 1022 vehicles include all costs for the build of either an MLRS A0 carrier or an MLRS A1 carrier less unique material and A1 ESIP. The Government reserves the unilateral right to require the Contractor to acquire up to ten (10) additional sets of MLRS A1 unique material. The Government may exercise its right for all ten (10) unique A1 material and ESIP requirements at the per unit price set forth in Section B, (B.9.4). If the Government exercises its right, the Contractor shall use the material to completely build out carriers under CLIN 1022 and the delivery schedule shall remain as stated in Section F of the Contract. The Government shall notify the Contractor that it is exercising its right to acquire additional material by giving written notification (a contract modification) to the Contractor. The Governments right to exercise this option shall commence as of date of contract award. The right shall expire 30 November 2001.

#### H.65 BRADLEY A3 PROGRAM CLOSURE

H.65.1 This contract was based on the assumption that there will be a follow-on award(s) for BFV A3 vehicles. The agreed upon price did not include any amount for the impact that could result from closure of the BFV A3 program. For purposes of this clause, BFV closure means an anticipated break in BFV production/remanufacture due to a lack of a follow-on A3 contract. For purposes of this clause a follow-on A3 contract means the call up of program year two vehicles under this contract, the call up of program year three vehicles under this contract, a US Government contract or a FMS contract or a Direct Foreign Sales contract.

H.65.2 A follow-on BFV A3 award for FY02 is contemplated for March 31, 2002 in order to avoid a production break of BFV A3 vehicles. A follow-on BFV A3 award for FY03 is contemplated for March 31, 2003 in order to avoid a production break of BFV A3 vehicles. A follow-on BFV A3 award for FY04 is contemplated for March 31, 2004 in order to avoid a production break of BFV A3 vehicles. If there is no award of a follow-on contract by March 31 of the above years, the Contractor shall notify the Government within thirty (30) days of their intent to submit a proposal for equitable adjustment. The proposal shall be submitted within sixty (60) days of the notification.

H.65.3 Costs that may be considered as allowable under this clause are:

- severance and outplacement benefits
- direct labor inefficiencies due to work around, and build-out
- inefficiencies due to associated build-out efforts, dispositioning of tooling, machines and fixtures

H.65.4 The maximum liability to the Government as a result of this clause is:

- a) \$15,738,600.00 or 11 Bradley A3 vehicles, if the A3 program is closed prior to second program year call up.
- b) \$16,138,000.00 or 11 Bradley A3 vehicles, if the A3 program is closed after second year call up, but prior to third program year call up.
- c) \$16,595,000.00 or 12 Bradley A3 vehicles, if the A3 program is closed following program year three call up.

H.65.5 The Government, following negotiations and agreement on an equitable adjustment, if any, has the unilateral option to:

- 1) increase the amount of this contract by negotiated agreement; or
- 2) an equitable adjustment separate from this contract; or
- 3) reduce this contract by up to twelve (12) BFV A3 vehicles; or
- 4) a combination of the above.

H.65.6 This clause is in addition to the clause of the contract entitled "CANCELLATION UNDER MULTIYEAR CONTRACTS".

#### H.66 Reserved

#### H.67 PRICE REDETERMINATION - PROGRAM YEAR TWO AND PROGRAM YEAR THREE

H.67.1 The parties to this contract acknowledge that there may be changes in the current business base of the Contractor that could significantly impact indirect rates beyond program year one. Accordingly, the purpose of this clause H.67 is to provide a mechanism by which the contract per unit prices of program year two and three vehicles may be adjusted, upward or downward, in consequence of changes in the contractor's Business base during such period.

H.67.2 If an adjustment is required pursuant to this clause, the Contractor shall, within 60 calendar days after 30 November 2002, submit a proposal for equitable adjustment or rationale for no adjustment. The parties to this contract have signed a Memorandum of

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Agreement as of contract award. This agreement shall list (1) by item the agreed upon direct costs that would represent this contracts direct costs base for which indirect rates will be adjusted by program year, and (2) the agreed upon contractor's business base by burden center by year. The proposal shall take the agreed upon direct costs (base) and (apply rates produced by incorporating the new agreed upon business base dollars into the March 6, 2001 generation F2 pricing rate model). The current contract vehicle unit prices shall be adjusted by the difference between the original vehicle unit price and the revised unit price resulting from these negotiations. Any price adjustment made to the vehicle as the result of scope changes, i.e. Block Mod 1 and Block Mod 2, are not subject to adjustment. Failure to reach an equitable adjustment on the above shall be considered a dispute within the meaning of the Disputes clause of this contract.

H.67.3 As an example, assume for illustration purposes:

- a) Original price of Program Year 2 item is \$2,100,000.00
- b) Original price of Program Year 3 item is \$2,000,000.00
- c) Adjusted price of Program Year 2 item is \$2,200,000.00
- d) Adjusted price of Program Year 3 item is \$1,950,000.00
- e) Current price of Program Year 2 item is \$2,200,000.00
- f) Current price of Program Year 3 item is \$2,150,000.00

then,

g)	Program Yr 2	Program Yr 3
Original Price	\$2,100,000.00	\$2,000,000.00
Adjusted Price	<u>2,200,000.00</u>	<u>1,950,000.00</u>
Adjustment	(\$ 100,000.00)	\$ 50,000.00

h) In this example, all Program Year 2 items would be subject to a \$100,000 per unit increase, while Program Year 3 items would receive a \$50,000 per unit decrease.

	Program Yr 2	Program Yr 3
Current Price	\$2,200,000.00	\$2,150,000.00
Adjustment	<u>100,000.00</u>	<u>- 50,000.00</u>
New Price	\$2,300,000.00	\$2,100,000.00

H.67.4 The Government, following negotiations and agreement on an equitable adjustment, if any, has the unilateral option to:

- 1) increase/decrease the amount of this contract by negotiated agreement; or
- 2) an equitable adjustment separate from this contract; or
- 3) reduce this contract by up to nine (9) BFV A3 vehicles for program year two adjustment and up to nine (9) BFV A3 vehicles for program year three adjustment; or
- 4) a combination of the above.

H.67.5 If program year two or program year three are not called up, or if the contract is terminated prior to program year three call up, this clause shall no longer be applicable. In the event of a sale of the contractor or novation of the contract, the parties shall mutually determine the impact of such a sale or contract novation on the terms of this clause in order to retain the original intent of the clause. Any impact of restructuring costs would be handled outside of this clause.

H.67.6 The maximum upward or downward adjustment shall be \$13,500,000 for program year two. The maximum upward or downward adjustment shall be \$13,500,000 for program year three. No adjustments shall be made to program year one vehicles.

H.67.7 For purposes of this clause, program year two and three vehicles refer to A3 vehicles. Any A3 vehicles added to the contract beyond the quantity as of the date of contract award shall not be subject to this adjustment. This clause shall be a one-time adjustment.

#### H.68 URGENT SPARE REQUIREMENTS

H.68.1 The Government may on occasion have the need to acquire production parts to meet urgent test or fielding shortages. The parties to the contract agree that the Government may acquire any part listed on the Bill of Material (BOM) (BOM as of date of settlement) for the vehicles under this contract, at a predetermined price as set forth in paragraph H.68.2. If urgent parts are required, the Government shall notify the Contractor of it's need and the Contractor shall determine the availability of the required parts. Based on the immediate availability of the parts, a bilateral modification to the contract will be executed. If acquisition of the part(s) will result in potential delays/disruptions/increased costs to the production line, the Contractor shall notify the PCO and PM BFV office of

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the estimated costs and time impact of the delay prior to executing the modification.

H.68.2 For any parts acquired in connection with this clause, the price shall be determined by applying the following factor to the BOM price for the part based on the period in which the acquisition occurs. The factor contains profit. The BOM price shall be based on the price for the Program Year for which the acquired part was originally purchased:

1.398 x BOM price

H.68.3 The agreement is subject to the following:

- a) Part acquisitions are limited to no more than 2 per month, and no more than 10 per year. Attachment 15 to the contract, entitled "Spare Acquisitions", will be used to track spares acquisitions pursuant to this clause, by calendar year.
- b) The BOM as of date of award shall be the BOM for price determination.
- c) Packaging shall be best commercial, individual packaging.
- d) The FOB point is origin.
- e) The agreement expires 3 months after program year 3 call up.
- f) The parts shall be presented for shipment within 24 hours of the date of the contract modification ordering the parts.

H.69 RESERVED

H.70 RESERVED

H.71 CONTRACT ADJUSTMENT/OPTION - MULTIYEAR CONTRACT

The contract was converted to a multiyear contract as provided for by this contract special provision H.71, by contract modification P00001.

H.71.1 This contract DAAE07-01-C-M016 is awarded as a one-year production contract for the vehicles and kits listed below. However, the parties to this contract negotiated a mutual agreement on price with the full understanding that a contract with multiyear vehicles/requirements for Bradley A3 vehicles and single year vehicles/requirements with options for other vehicles and kits listed below, would be awarded. It is still the intent of the parties to enter into a multiyear arrangement. However, the Government has not yet made a determination if it desires to enter into a multiyear arrangement for the Bradley A3 program. Therefore, the parties have agreed to award the contract as a single year effort, utilizing the multiyear pricing settlement with the full and complete understanding that if the contract is not modified/converted to a multiyear arrangement by September 4, 2001, then the Contractor may request an equitable adjustment to the contract.

H.71.2 The contract is structured as a multiyear contract. Since the award was made as a single year, all clauses/regulations/provisions that apply only to a multiyear contract effort are annotated as "Not Applicable" throughout the contract.

H.71.3 If the Government receives the authority to proceed with a Bradley Multiyear award prior to September 4, 2001, the Government shall have the unilateral right to convert this contract to a Multiyear effort at the initially negotiated amount for the vehicles/kits listed below. If the Government determines that it desires to exercise this option, the Government will provide a written notification (contract modification) to the Contractor. The Government's unilateral right to exercise this option shall expire 4 September 2001. The option (contract modification) will consist of removing the "not applicable" statement to annotated clauses/provisions/requirements and funding of the Economic Ordering Quantity (EOQ) requirements for program year two (\$5,656,000) and program year three (\$5,497,000). Upon issuance those multiyear specific provisions shall be in full force and effect.

H.71.4 Should the Government fail to convert/modify the contract from a single production year contract to a multiyear production contract by September 4, 2001, the contractor shall have the right to seek an equitable adjustment in the price of the contract. If the contractor makes such a request it shall be in the form of a proposal(s) for equitable adjustment. The request must be made not later than December 2, 2001. The parties agree to attempt to reach a mutual settlement within 120 days of the request for equitable adjustment. Following negotiations/mutual agreement the contract shall be adjusted as stated below. It is understood by the parties that all basic vehicle/kit quantities and option vehicle/kit quantities are subject to the adjustment. However, if a vehicle reduction is agreed upon, the vehicle reduction shall be applied against A3 vehicles.

Adjustment shall be as follows:

- 1) an increase in the contract amount by not more than \$61,985,419.00; or
- 2) a reduction in Bradeley A3 vehicle by not more than 41 vehicles; or
- 3) a combination of the above.

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H.71.5 Contract vehicle/kit quantity at award (Single Year)

109 each Bradley A3  
13 each Bradley M2A2 ODS  
19 each MLRS A0  
10 each MLRS minus  
121 each kit 57K1589  
58 each kit SK57K1594

Contract vehicle/kit quantity negotiated for contract settlement:

	Program Year 1	Program Year 2	Program Year 3
Bradley A3	109	142	138
Bradley ODS	13	0	0
Bradley ODS	35 *	0	0
MLRS	19	0	0
MLRS minus	10	0	0
MLRS A1 Material	10 *	0	0
MLRS A0 Material	10 *	0	0
Kit 57K1587	0	9	0
Kit 57K1588	0	36 *	0
Kit 57K1589	121	0 *	128 *
Kit SK57K1593	0	44 *	28 *
Kit SK57K1594	58	58 *	64 *

\* Option Requirement

H.72 OPTION - BATS Image Generators

H.72.1 The Government reserves the unilateral right to increase the quantities of BATS Ensemble Image Generators delivered under this contract by up to an additional 2 each. The Government may exercise this lot at the per unit price set forth in Section B CLIN 3030 by giving written notice to the Contractor. The Governments unilateral right to exercise this option shall expire December 31, 2002

H.73 OPTION - BATS Spares Parts

H.73.1 The Government reserves the unilateral right to increase the quantities of BATS Spare Parts delivered under this contract by up to an additional 1 lot as defined in Attachment 20. The Government may exercise this lot at the per unit price set forth in Section B CLIN 3031 by giving written notice to the Contractor. The Governments unilateral right to exercise this option shall expire December 31, 2002.

H.74 RESERVED

H.75 Contract Adjustment - Due to Engines -Follow-on Contract

H.75.1 The parties to this contract recognize that unit prices for the FY02 A2 ODS vehicles are based on the bundling of material/ LRU procurements with a planned follow-on contract(s), with the understanding that the follow on requirements will result in the remanufacture of a total of 110 Bradley 600 hp engines during calendar year 2003. The Contractor's bundling agreement with Cummins Engine is based on utilizing this quantity. The parties agree that this quantity may be acquired in a single contract or over multiple contracts, provided that the total quantity to be remanufactured in calendar year 2003 meets the above quantity requirement

H.75.2 Should the Government fail to award a follow-on contract(s) that meets the above quantity limit, then the Contractor may be entitled to an equitable adjustment under this contract against FY02 A2 ODS vehicles. If the Contractor makes such a request, it shall be in the form of a proposal(s) for equitable adjustment. The request(s) must be made not later than three (3) months from 31 March 2003. Following negotiations, the method of contract shall be solely at the option of the Government.

- (a) An equitable adjustment to the total contract amount to compensate the Contractor and the Contractor's supplier. The amount shall not exceed \$245,100.
- (b) A reduction in the quantity of FY02 A2 ODS vehicles delivered, with no reduction in contract amount. The reduction in the number of vehicles shall be no greater than 1 vehicle.

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H.76 Delayed Ordering of 25 MM Gun for FY02 A2 ODS (RESERVED)

H.77 MATERIAL ADJUSTMENTS - MODIFICATION P00032

H.77.1 The prices for the 33 each additional ODS vehicles and modification kits specified in H.77.2 below are based on Not To Exceed (NTE) subcontractor pricing with General Dynamics Land Systems (GDLS).

H.77.2 The NTE subcontract prices are set forth below:

ITEMS: 12446500, TEC ECB Mod Kit, 120 each  
12561092, Handstation Mod Kit, 129 each  
IROAN-3-3ECB Mod Kit, 120 each  
12900708, Common DECA, 151 each

SUBCONTRACTOR: General Dynamics Land Systems (GDLS)

NTE SUBCONTRACT PRICES:

12446500 Kit, 12561092 Kit , and IROAN-3-3ECB Kit \$8,099,880.00  
12900708 Common DECA, Unit Price \$31,260.00 \$4,720,260.00

H.77.2.1 The Contract prices for the vehicles and modification kits referenced in H.77.2 shall be adjusted to reflect any reduction negotiated to the NTE subcontract prices. The differences between the reduction in the NTE subcontract price and the respective final negotiated subcontract prices shall be subtracted from the appropriate vehicle and kit prices in the prime contract.

H.72.2.3 The Contractor shall submit a proposal for a downward adjustment of the aforementioned interim subcontract prices within 90 days of award of Modification P00032. A bilateral modification shall be executed incorporating the impact of any price reduction into appropriate areas of the Contract. The Government shall reimburse the Contractor the costs and fee for fact finding, negotiating and defititizing the subcontractor proposals assigned with H.77.2 and the total settlement amount will be less then the ceiling amount.

H.77.3 If agreements on definitive subcontract prices are not reached between the Contractor and its subcontractor, or if the Contractor and the Government do not reach an agreement on final prices to replace the above interim subcontract prices by 31 January 2003 or such other period as may be agreed to by the Contracting Officer, the Contracting Officer has the right to determine a reasonable final price for the above described subcontract, for the purpose of determining the final adjustment due under this special provision is subject to appeal by the Contractor, pursuant to the clause of this Contract entitled "Disputes".

H.78 FY03 ODS, MODIFICATION P00073

H.78.1 The prices for the major components specified below in paragraph H.78.2 are based on Not To Exceed (NTE) subcontractor pricing with General Dynamics Land Systems (GDLS), Raytheon, and ATK.

H.78.2 The NTE subcontractor prices are set forth below for the FY03 ODS vehicles:

Item	Part Number	Quantity	Subcontractor	NTE Unit Price	Total Price
25mm Gun	12524600ENH-R	63	ATK	\$25,355	\$1,597,365
Transmission	12446500RX	30	GDLS	\$11,695	350,854
Transmission	12446500RX	20	GDLS	\$29,875	597,500
Transmission	12446500RX	13	GDLS	\$62,688	814,944
Shift Tower	12446242	20	GDLS	\$ 2,793	55,860
Shift Tower	12446242	13	GDLS	\$ 2,793	36,309
Elec Assy	12446333	20	GDLS	\$ 5,601	112,020
Elec Assy	12446333	13	GDLS	\$ 5,601	72,813
Cable	12446205	20	GDLS	\$ 772	15,440
Cable	12446205	13	GDLS	\$ 772	10,036
Gunner's Handstation	12900571-R	50	GDLS	\$ 2,475	123,750
Gunner's Handstation	12900571-R	13	GDLS	\$ 3,280	42,640
Commander's Handstation	12900572-R	50	GDLS	\$ 2,475	123,750
Commander's Handstation	12900572-R	13	GDLS	\$ 2,295	29,835

The item below reflects the NTE subcontractor prices set forth for the ASL Combat Spares:



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Elec Assy	12446333	8	GDLS	5,601	44,808
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H.78.2.1 The Contract prices for the vehicles and major components referenced in H.78.2 shall be adjusted to reflect any reduction negotiated to the NTE subcontract price. The difference between the reduction in the NTE subcontract price and the respective final negotiated subcontract prices shall be subcontracted from the appropriate vehicle prices in the prime contract.

H.78.2.2 The Contractor shall submit a proposal for a downward adjustment of the aforementioned interim subcontract prices within 180 days after award of Modification P00073. A bilateral modification shall be executed incorporating the impact of any price reduction into appropriate areas of the Contract. The Government shall reimburse the Contractor the costs and fee for fact finding, negotiating and definitizing the subcontractor proposals assigned with H.78.2 and the total settlement amount will be less than the ceiling amount.

H.78.3 If agreements on definitive subcontract prices are not reached between the Contractor and its subcontractor, or if the Contractor and the Government do not reach an agreement on final prices to replace the above NTE subcontract prices by 30 April 2004 or such other period as may be agreed to by the Contracting Officer, the Contracting Officer has the right to determine a reasonable final price for the above described subcontract, for the purpose of determining the final adjustment due under this special provision is subject to appeal by the Contractor, pursuant to the clause of this contract entitled "Disputes".

H.79 COFT Government Furnished Material

The following items are provided by the government to UDLP for COFT:

- Item #1: COFT sheltered and nonsheltered, quantity of 2. This unit will be kept until the end of the contract and delivered as RECAP COFTs
- Item #2: CCTT software version 9.2 with the SIMNET integration that is for the Linux OS.
- Item #3: Complete TDP package; Electrical and Mechanical drawings reequiured for each version of fielded COFTs.
- Item #4: OTBS af V1.0 or 2.0 if available. Current COFT TDP(s) in CAD format (6 configurations).

\*\*\* END OF NARRATIVE H 001 \*\*\*